STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company	:	
	:	
	:	**Docket No. 14-0312**
Annual formula rate update and revenue requirement reconciliation under Section 16-108.5 of the Public Utilities Act.	:	

REPLY BRIEF ON EXCEPTIONS OF THE STAFF OF THE ILLINOIS COMMERCE COMMISSION

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Staff of the Illinois Commerce Commission ("Staff"), by and through its counsel, pursuant to the direction of the Administrative Law Judges ("ALJs") and Section 200.830 of the Illinois Administrative Code (83 Ill. Adm. Code 200.830), respectfully submits its Reply Brief on Exceptions ("RBOE") to the Briefs on Exceptions ("BOE") filed by: Commonwealth Edison Company ("ComEd"); the People of the State of Illinois by Attorney General Lisa Madigan ("AG"); the City of Chicago ("City"), the Citizens Utility Board ("CUB"), and the Illinois Industrial Energy Consumers ("IIEC"), jointly ("CCI"); the Illinois Competitive Energy Association ("ICEA"); and the Retail Energy Supply Association ("RESA") which were filed in response to the ALJs' proposed order ("ALJPO") issued on October 15, 2014, in the above-captioned matter. Staff's failure to address other positions or arguments that were contained in those BOEs should not be construed as agreement with those positions or arguments.

I. INTRODUCTION

II. OVERALL REVENUE REQUIREMENT

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1. Cash Working Capital

    a. Pension and OPEB expense leads

    b. Pass-through taxes revenue lags for the IEET and CIMF

<u>ComEd Exception 2: Pass-through tax revenue lag</u>

ComEd poses several arguments in its Brief on Exceptions that the ALJPO erred in its determination regarding the service lag component of ComEd's Illinois Electricity Excise Taxes ("IEET") and City of Chicago Infrastructure Maintenance Fees ("CIMF"). ComEd BOE at 4-5. Each of these arguments should be rejected.

ComEd claims that the since the treatment of pass-through tax *expense lead* in this docket is not the same as the treatment in Docket No. 10-0467, then the Commission should reject Staff's adjustment for the pass-through tax *revenue lag* in this docket. *Id.* at 4. While the Company argues pass-through tax expense lead and revenue lag are inter-related, that is not evident in the record in Docket No. 10-0467 or in the Commission conclusion for Cash Working Capital ("CWC") in that docket. Staff IB at 12-13. What is clear in the record in Docket No. 10-0467 is that revenue lag days were set by the Commission to 39.26 days for the pass-through taxes, IEET and CIMF, the 54.47 revenue lag days less the service lag of 15.21 days. ICC Docket No. 10-0467, ALJPO at 15-16. The collection of revenues and the remittance of expenses are based on two separate cash flows and therefore should be computed independently, as they were in Docket No. 10-0467. *Id.*

Next, ComEd claims that since the pass-through tax is part of the bill customers receive, it must follow that the pass-through tax is based on the service provided to the customers. ComEd BOE at 4-5. As Staff has indicated, the pass-through tax is not due to the provision of service by the utility, but rather is a tax collected and remitted to a third party taxing authority. Staff IB at 12.Thus the service lag, by definition, does not apply.

Finally, the Company claims that the conclusion on this issue is inconsistent with the order in Docket Nos. 12-0511/12-0512 (Cons). ComEd BOE at 5. However, the Company does not provide rationale to support this conclusion. *Id.* The Commission should not depart from its prior conclusions, made in at least the last two rate cases, wherein a lead lag study was considered on this same issue for ComEd.

Therefore, both alternatives A and B offered as Exception No. 2 should be rejected.

c. Pass-through taxes expense leads

d. Intercompany billings expense lead

<u>ComEd Exception 3 – Intercompany billing expense lead</u>

ComEd suggests that, because "BSC generally performs tasks that ComEd employees would otherwise perform," BSC is "arguably subsidizing customers." ComEd

BOE at 6. However, ComEd offers no rationale to support the claim, nor addresses what may have changed at the utility since the Commission considered this issue in the last two dockets wherein the Intercompany billings expense lead was addressed, and made conclusions similar to that in this ALJPO. *Id.* Therefore, ComEd's Exception No. 3 should be rejected.

V. OPERATING EXPENSES

A. Uncontested Issues

1. Distribution O&M Expenses (issues not identified in V. C.)
2. Customer-Related O&M Expenses (issues not identified in V. C.)

ComEd Exception 4: Customer-Related O&M Expenses

ComEd seeks to add a line to the ALJPO's itemized listing of reductions to ComEd's customer-related expense that reflects the removal of $45,000 associated with ComEd's credit/purchase card ("PCard") expenditures. ComEd BOE at 7. Staff agrees that the language suggested by ComEd should be added. This amount was already excluded from ComEd's rebuttal revenue requirement (the starting point for the ALJPO's appendices), so no corresponding changes are necessary to the ALJPO appendices to reflect the removal of the $45,000 associated with ComEd's PCard.

3. Administrative and General Expenses
4. Charitable Contributions
5. 2013 Merger Expense
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8. Regulatory Asset Amortization

9. Operating Cost Management Efforts

10. Lobbying Expense

11. Rate Case Expenses

12. Corporate Credit Cards

ComEd Exception No 5: Corporate Credit Cards

ComEd seeks to correct the ALJPO to reflect that ComEd voluntarily excluded approximately $441,000 in credit card charges (rather than $448,000). ComEd BOE at 8. Staff agrees with this correction. The correct amount was already excluded from ComEd's rebuttal revenue requirement (the starting point for the ALJPO's appendices), so no corresponding changes are necessary to the ALJPO appendices to reflect this language correction.

13. Gross Revenue Conversion Factor

B. Contested Issues

1. Depreciation for the Filing Year Revenue Requirement

2. Incentive Compensation Program Expenses

a. Annual Incentive Program ("AIP")

ComEd Exception 6 – Annual Incentive Program ("AIP")

ComEd recommends removal of certain language in the Commission Analysis and Conclusion section of the ALJPO on this issue which ComEd suggests is arguably inconsistent with, and not necessary to support, the ALJPO's ultimate findings on this issue. ComEd BOE at 8-10. ComEd opines that the language it recommends be removed from the ALJPO could arguably be interpreted to find that the entirety of ComEd's AIP expense is based on Earnings Per Share ("EPS"). ComEd also suggests the addition of various evidentiary cites to the ALJPO on this issue. *Id.*

Staff agrees with ComEd that the ALJPO statements related to EPS may be interpreted to support Staff's primary proposal and that of the AG, rather than Staff's alternative and clarification is required. *Id.* Staff does not support ComEd's exception language, however. ComEd Exceptions to PO at 51-52. To the extent the Commission adopts Staff's alternative proposal, the Commission should rely on Staff's rationale for adopting its alternative.

In particular, the ALJPO should recite as support for the Staff's alternative: (1) that the alternative proposal is consistent with past Commission practice and law, Commonwealth Edison Co., ICC Order No. 11-0721, 90 (May 29, 2012); Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2014 IL App. (1st) 130302 June 30, 2014 at *3; and (2) Staff's rationale that the alternative is not tainted by the mixed incentives inherent in ComEd's current "hybrid" AIP and is therefore consistent with EIMA, because it is based on allowing recovery for market-based salaries and a small bonus. Staff RB at 10. Staff also points out that ComEd's exception language that would delete that rationale should be rejected. ComEd Exceptions to PO at 51.

Staff recommends the ALJPO at page 50 be modified as follows:

> The record is clear that the amount ComEd is seeking to recover for its 2013 incentive compensation expense ~~is~~ may be based on Exelon's EPS. Expense means operating expenses that are reflected in the Company's FERC form 1 or otherwise reflected in the Company's books and records. Staff Ex. 8.0 at 22. The dollar amount paid to its employees and sought to be recovered from ComEd's ratepayers is based in part on Exelon's EPS, as Staff has argued in support of its alternative proposal. Regardless of its employees' performance on the operational metrics, the actual expense amount is more than based on Exelon's EPS, it is entirely controlled and determined by its affiliate's earnings per share. If Exelon's

EPS is too low, ComEd employees receive no AIP regardless of their performance on operational metrics.

The Commission accepts Staff's rationale for its alternative proposal, in particular, 1) that the alternative proposal is consistent with past Commission practice and law (Commonwealth Edison Co., ICC Order No. 11-0721, 90 (May 29, 2012); Commonwealth Edison Co. v. Illinois Commerce Comm'n, 2014 IL App. (1st) 130302 June 30, 2014 p. *3.); and 2) Staff's rationale that the alternative is not tainted by the mixed incentives inherent in ComEd's current "hybrid" AIP and is therefore consistent with EIMA,

Finally, Staff opposes all other language changes ComEd recommends to this section of the ALJPO. ComEd Exceptions to PO at 51-52. ComEd's recommended language changes are unnecessary, weaken the ALJPO, and should be rejected.

AG Exception No. 1

AG takes exception to the ALJPO allowance of any 2013 AIP recovery on multiple grounds. AG BOE at 2-9. Although Staff's primary position supports the AG in that the entire AIP should be disallowed, Staff maintains its alternative position adopted by the ALJPO effectively negates the EPS limiter and allows recovery of 100% of the fair market value of employees' salaries plus a small bonus. Staff IB at 45. Staff supports the ALJPO conclusion adopting Staff's alternative position.

b. Key Manager Long Term Performance Plan ("LTPP")

CCI Exception 1: Long Term Performance Plan

CCI argues that ComEd's LTPP program appears to be designed to reward employees for longevity with ComEd (which CCI observes is not one of the recoverable operational metrics listed in EIMA) and that the LTPP program fails to benefit ratepayers. CCI argues that in the absence of evidence to the contrary, the Commission cannot find that the redundant metrics of the LTPP provide any greater incentive for employees to achieve operational goals than if the metrics were rewarded only once. CCI BOE at 2-3.

Staff disagrees. In Staff's view the LTPP is not duplicative of AIP, is based on allowable metrics which have been shown to provide customer benefit, and is but one component of the compensation mix utilized by ComEd to pay market level compensation to its key managers and mid-level management employees. Staff IB at 45-46. As such, the LTPP costs should be recovered in rates. CCI's exceptions to the ALJPO should be rejected.

c. Long-Term Performance Share Awards Program ("LTPSAP")

ComEd Exception 7: Long Term Performance Share Awards Program

ComEd recommends language changes regarding LTPSAP which are unnecessary and which amend the ALJPO to remove all discussion regarding the conclusion that the Total Shareholder Return ("TSR") feature of the LTPSAP is contrary to EIMA. ComEd's argument and suggested language changes should be rejected.

ComEd's arguments to amend the ALJPO language regarding the TSR feature of the LTPSAP center on a misguided understanding of Staff's position regarding the TSR and an unfounded legal argument which misses the basis of Staff's interpretation of the law. As stated in Staff's briefs on this issue, the Act "also subjects the recovery of incentive compensation to the restriction that such recovery must be consistent with Commission practice and law and be prudent and reasonable." Staff IB at 48. In fact, Section 16-108.5(c)(4) and (c)(4)(A) provide that the performance-based formula rate approved by the Commission shall, among other things:

> (4) Permit and set forth protocols, **subject to a determination of prudence and reasonableness consistent with Commission practice and law**, for the following:
> (A) recovery of incentive compensation expense that is based on the achievement of operational metrics, including metrics related to budget controls, outage duration and frequency, safety, customer service, efficiency and productivity, and

> environmental compliance. **Incentive compensation expense that is based on net income or an affiliate's earnings per share shall not be recoverable under the performance-based formula rate**;

220 ILCS 5/16-108.5(c)(4)(A) (emphasis added). Staff argued, and the ALJPO agrees, that the TSR feature of the LTPSAP was "based on the achievement of financial measures similar to net income and affiliate EPS which the Commission has on several occasions disallowed," and thus, not consistent with Commission practice and law. Staff IB at 48. ComEd appears to argue that since no party disputes that the TSR is not EPS or net income, Section 16-018.5(c)(4)(A) does not apply. ComEd BOE at 10. Staff's position, as adopted by the ALJPO, is that LTPSAP incentive compensation expense should be disallowed because, as demonstrated by Staff, the TSR feature is clearly not consistent with Commission practice and law, as required by Section 16-108.5(c)(4). Staff IB at 48-49.

ComEd claims that Staff and the ALJPO erroneously read into Section 108.5(c)(4)(A) an exception that does not exist, in contravention of the rules of statutory construction and Illinois law. On the contrary, Staff points to Section 16-108.5(c)(4) of EIMA which directs the Commission to approve rates that are subject to a determination of prudence and reasonableness consistent with Commission practice and law. ComEd admits the TSR feature is "a standard measure of the performance of a company's stock over time. It represents a composite of share price appreciation and dividends paid, expressed as an annualized percentage." ComEd BOE at 10 *citing* Staff Ex. 8.0 at 34. As Staff stated repeatedly in testimony and briefs, its objection to the TSR feature is that it is not a metric that provides a benefit to ratepayers, in contravention of the Commission's longstanding practice and law when evaluating incentive compensation programs. For that reason, Staff objected to recovery for that portion of the LTPSAP program. Contrary to ComEd's assertions, Staff does not read any exceptions into Section 108.5(c)(4)(A) that are not there. The ALJPO should be adopted as written.

3. Collection Agency Costs

ComEd Exception 8: Collection Agency Costs

ComEd suggests the order direct ComEd to include in its compliance filing revisions to its Rider PORCB, Rate BESH, and Rider PE, as applicable, to provide for the recovery of collection agency costs excluded from the delivery service revenue requirement in this proceeding. ComEd suggests those revisions should concurrently be effective with the change in delivery service recovery of those costs, specifically in customer bills issued for the January 2015 billing period. Staff agrees with ComEd's suggested language changes on this issue.[1]

As was clearly shown in Staff's record testimony and supporting briefs, collection agency costs associated with PORCB service are administrative costs as defined under 220 ILCS 5/16-118(c). Staff IB at 50. ICEA seemingly agrees, stating "ICEA concedes that a fair reading of "administrative costs" would include collection agency costs, and does not wish to dispute this point at this time." ICEA BOE at 3-4. The ALJPO analysis and conclusion on this issue should be affirmed.

ICEA takes exception to the ALJPO's analysis and conclusion regarding the recovery of collection agency costs associated with Purchase of Receivables/ Combined Billing ("PORCB") service and argues that collection agency costs associated with

[1] Staff notes that unlike the issue of tariff changes associated with the Commission's conclusions regarding customer care costs, discussed in Section X.B.2, below, the tariff changes associated with the recovery of collection agency costs were provided for all parties' consideration within ComEd's rebuttal testimony, ComEd Ex. 13.09, 13.10, and 13.11.

PORCB service should be recovered from all delivery service customers rather than only those who cause those costs. ICEA BOE at 2. In support of its argument, ICEA argues the meaning of Section 5/16-118(c) of the Act and offers opinions that are unsupported in the record in this proceeding. ICEA BOE at 2-5. ICEA argues that the following passage of 220 ILCS 5/16-118(c) supports the ICEA argument that all ratepayers – including those who do not obtain energy supply from Retail Electric Suppliers ("RESs") – should pay for collection agency costs that ComEd would not have incurred if not for the RESs choice to participate in PORCB service:

> The electric utility retains the right to impose the same terms on retail customers with respect to credit and collection, including requests for deposits, and retain the electric utility's right to disconnect the retail customers, if it does not receive payment for its tariffed services or purchased receivables, in the same manner that it would be permitted to if the retail customers purchased power and energy from the electric utility.

220 ILCS 5/16-118(c). Specifically, ICEA argues "if collection agency costs all flowed through delivery service tariffs on the same terms for both Rider PE and RES service customers, the plain language of Section 16-118(c) would be satisfied." ICEA BOE at 3. However, the cited language simply provides for the extension of credit and collection practices applicable to customers who purchase power and energy from the utility to RES customers who ultimately purchase power and energy from a RES. The cited passage says nothing about passing collection agency costs that are clearly attributable to PORCB service on to all delivery service customers.

In regard to ICEA's argument on regulatory lag, *id.* at 4, there is no evidence in the record that supports the ICEA theories. ICEA provided no evidence that customers actually switch energy suppliers more frequently than Rider PORCB can be reconciled.

ICEA further provided no evidence in the record to support its theory that customers who switch energy supply face cost "misallocations" that are more harmful than the "misallocations" customers receiving energy from any supplier face when moving into or out of the ComEd service territory. The theories of regulatory lag and misallocation distract the Commission from the undeniable fact that the collection agency costs at issue are (1) costs that the RESs would have incurred and passed onto their customers themselves had the RESs not elected to participate in PORCB and (2) administrative costs appropriate for recovery through Rider PORCB and Rider PE (and associated Rate BESH). The Commission should not adopt ICEA's arguments and replacement language.

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b. Reconciliation Year Plant Additions

c. Contributions to Energy Low-Income and Support Programs

B. Contested Issues

1. Update of Exelon Business Service’s Company General Services Agreement

<u>ComEd Exception 10 – Update GSA</u>

While ComEd takes issue with the ALJPO conclusion regarding the update of the Exelon Business Services Company (“BSC”) General Services Agreement (“GSA”), the main complaint appears to be that the approval from all regulatory bodies could not be completed within the 90-day timeframe. ComEd BOE at 14. The Company misrepresents both Staff's proposal and the conclusion in the ALJPO. *Id.* Both the ALJPO and Staff recommended that an updated GSA be filed with the Commission within 90 days of the final order in this proceeding. ALJPO at 90; Staff IB at 68. This 90-day deadline is for the initiation of discussion concerning any draft updates, not the final approval from all regulatory bodies involved. Staff IB at 68. Staff specifically indicated seven separate areas in need of updating in testimony and which are reiterated in the ALJPO at pages 86 – 89. Staff IB at 63 – 67. If additional updates are identified by ComEd, they can propose other corrections as well as those already identified by Staff.

ComEd, by offering alternative B of Exception No. 10, only serves to further delay the updating of the GSA rather than addressing a cooperative solution to Staff's concerns about the outdated GSA during the testimony phase of the case. ComEd BOE at 14. Staff has already done a large part of the work involved through its identification of outdated sections of the current GSA. Staff IB at 63 – 67. Only ComEd, however, is ultimately responsible for maintaining an updated governing document.

Therefore, both alternatives A and B of Exception No. 10 should be rejected.

2. Customer Care Costs

In its BOE, Staff demonstrated that the ALJPO improperly decided that ComEd should allocate approximately $11 million attributable to ComEd's delivery service function to the default supply function, given that the evidence fails to show that such an allocation is appropriate. Here, Staff responds to certain positions taken and arguments and exceptions made by ComEd and RESA.

Specifically, Staff responds to:

I. RESA's position that the Commission should accept RESA's modification to the Alternative Study which utilizes a "streamlined" Revenue Allocation Factor rather than the Bill Allocation Factors used by ComEd;

II. RESA's position that the Commission should accept RESA's modification to the Alternative Study in which it excludes ComEd's Rider PORCB revenue from the equation utilized to calculate its Revenue Allocation Factor; and

III. ComEd's position that, if the Commission were to adopt the Alternative Analysis and shift approximately $11 million in customer care costs attributable to ComEd's call center operations out of the delivery service revenue requirement, the Commission should direct ComEd to include in its compliance filing tariff revisions to its Rider PE and Rate BESH, as applicable, to provide for the recovery in supply charges of these costs.

<u>Response to RESA's Brief on Exceptions</u>

I. The Commission should reject RESA's position that the ALJPO should be revised to modify the Alternative Study to utilize the "streamlined" Revenue Allocation Factor

In its BOE, RESA continues to ignore the principles of cost causation with respect to the issue of customer care costs. In its BOE, RESA asserts that while RESA does not object to using the Alternative Study as a starting point to allocate customer care costs, RESA requests that the ALJPO be modified such that it would result in an *additional* allocation of $21 million of customer care costs to the default supply rate. RESA BOE at 3.

While Staff disagrees with the ALJPO's allocation of approximately $11 million to supply charges and took exception, Staff strongly disagrees with RESA's "streamlined" modification, which will increase this allocation to supply by an additional, unjustified $21 million for a number of reasons. First, there is nothing "streamlined" about RESA's modification to ComEd's Alternative Study. Even putting aside the fact that RESA has a vested interest in the cost allocation decisions made in this case on behalf of its members, its cost allocation positions are inaccurate with respect to this issue.

As part of RESA's "streamlined" expedition, it proposes that "the Alternative Study should be modified to utilize the Revenue Allocation Factor methodology for *all* categories of costs that are deemed related to the default supply rate." RESA BOE at 5. RESA explains that its preferred Revenue Allocation Factor "simplifies the Alternative Study by using one allocation factor for all cost categories that are related to default service . . . and [] the Revenue Allocation Factor ties 100% of the customer care cost allocation to the level of customer migration." *Id.* Basically, RESA's proposed "streamlined" approach allocates customer care costs in proportion to the amount of default supply revenue recovered by ComEd. *Id.*

First, Staff points out that this is an overly simplistic approach that ignores the more complicated nature of ComEd's operations and is contradicted by the record evidence. The record is replete with evidence that:

1. ComEd's customer care costs are not driven by the number of ComEd's supply customers. Staff Ex. 9.0 at 6-7.
2. No matter how many customers obtain electric supply services from RESs, because of its statutory role as the provider of last resort ("POLR"), ComEd simply

cannot avoid customer care costs. Staff Ex. 4.0 at 14; ICC Staff Exhibit 9.0 at 34; *see also* 220 ILCS 5/16-103(c).

3. This result is entirely consistent with ComEd's obligation as a POLR, *Id.*, given that "ComEd simply cannot avoid costs which support its supply function because it cannot eliminate its role as the POLR." *Id.*

RESA's reasoning is flawed because RESA correlates ComEd's customer care costs with supply customers when the logical and reasonable correlation lies with delivery service customers. Staff agrees with ComEd that "[t]he result of this error is that the Proposed Order [and RESA] improperly allocat[e] costs that are attributable to delivery service customers to supply customers and thereby tur[n] the cost causation principle on its head." *Id.* at 16.

Second, RESA's blanket application of the Revenue Allocator is not based on any reasoned analysis of the nature of customer care costs. The Revenue Allocators are developed based on ComEd's delivery and supply revenues. By ignoring the labor-driven nature of customer care costs and allocating such costs on the basis of revenues to ComEd's supply function, RESA does not consider the nature of these costs and the Company's on-going incurrence of these costs in connection with delivery service. Instead, RESA proposes to apply a Revenue Allocator, which is inappropriate because the underlying work is not driven primarily by the total amount of dollars owed to ComEd. The problem with RESA's "streamlined" approach is that the record does not contain evidence that the customer care functions RESA is trying to allocate are supply driven. A similar arbitrary allocation methodology such as the one proposed by RESA was rejected by the Commission in previous cases in Docket Nos. 08-0532 and 10-0 0467. RESA's arbitrary adjustment does not reflect ComEd's actual operations. Staff Ex. 9.0 at 25-27.

Third, Staff maintains that RESA's unjustified modification to add an additional $21 million attributable to ComEd's delivery service function and shift it to ComEd's default supply function is flawed from a policy perspective. The ALJPO indicated that:

> ComEd's statutorily required POLR obligations are a convincing argument against a strict application of the general principle of rate design based on cost causation. This statutory obligation could lead to the problem of very few customers being on ComEd's supply service which ComEd must offer even if it does not make economic sense. Those few customers could arguably not support the cost of their own service. At this point in time, this is not the status of ComEd's service and allocating $11 million is reasonable. This further supports the Commission's adoption of the Alternative Study, as opposed to the Allocation Study.

ALJPO at 102 (emphasis added). While allocating approximately $11 million to default supply rate may be tolerable (notwithstanding that both ComEd and Staff agree this should not happen), allocating $34 million does not make economic sense. Staff urges the Commission to reject RESA's flawed modification, which would more than triple the ALJPO's allocation recommendation, an approach that itself may in fact place an unreasonable burden onto default service customers in the future.

The ALJPO's cautious approach to this allocation issue, *i.e.* that it "could lead to the problem" and "at this point in time," recognizing ComEd's statutorily required POLR obligations, is sound and the Commission should adopt this language in the final Order. *See id.* at 102 (emphasis added). Even if the Commission is convinced that some amount of customer care costs should be shifted to ComEd's default supply function, accepting RESA's unjustified triple increase to the ALJPO's conclusion would ignore the possibility that the concept of "last one standing," as described in ComEd Ex. 2.0, 40. *See also* ICC Staff Exhibit 9.0 at 34.

Indeed, the Commission should not ignore the possibility of what could happen in the future; for example, in Docket No. 10-0467, the Commission concluded that:

> However, the alternative electric supplier market is just beginning to blossom. It is possible that, in the future, ComEd's customer care costs could differ from what they are now, in terms of the amounts involved and the types of services involved . . . Therefore, this issue should continue to be explored in the future as market conditions evolve.

Docket No. 10-0467, Final Order 210 (May 24, 2011). Indeed, between the time of Docket 10-0467 and this proceeding, customer switching increased from a mere 1% to approximately 70%. ComEd BOE at 16. While Staff argues for the Commission to accept the results of the Switching Study, in the alternative, the ALJPO's cautionary approach to this allocation issue is entirely consistent with market dynamics as witnessed to date. It also recognizes ComEd's obligation as provider of last resort in light of these market dynamics, which, taken together, reduces the chance for future adverse possibilities. In contrast, going down the path advocated by RESA, which would allocate approximately $34 million of customer care costs that are attributable to delivery service customers to supply customers, is unreasonable given the fact that ComEd must ensure that it has the applicable systems, procedures and operations in place to be ready to serve all customers. No matter how many customers obtain electric supply services from RESs, because of its statutory role as the POLR, ComEd simply cannot avoid customer care costs.

For all the reasons identified in Staff's briefs in this case, and for the reasons stated above, the Commission should reject RESA's adjustment to the Alternative Study.

II. The Commission should reject RESA's position that the ALJPO should be revised to modify the Alternative Study to utilize the "streamlined" Revenue Allocation Factor

RESA argues that, in addition to utilizing the Revenue Allocation Factor instead of the Bill Allocation Factors to allocate costs, the Revenue Allocation Factor calculation should be modified to exclude Rider PORCB revenues. RESA BOE at 6-7.

The costs for RES care services provided in association with Rider PORCB are recovered through the application of the Cost Recovery Amount ("CRA") used in the determination of the discounted receivable payments ComEd submits to RESs taking service under Rider PORCB. The costs for the RES care services provided in accordance with Rider PORCB, which include the purchase of the RESs' electric power and energy receivables and the billing of RES supply charges, as well as the IT interfacing to enable those purchases of the RESs' electric power and energy receivables and the billing of RES supply charges are recovered via the application of the CRA in Rider PORCB and not through delivery service charges. *See* ILL. C. C. No. 10, Rider PORCB, 1st Revised Sheet No. 393 – Original Sheet No. 405.

ComEd excluded $2,618,000 in information technology ("IT") costs related to the maintenance of ComEd's billing system to support Rider PORCB. ComEd Ex. 16.0 at 3. ComEd excluded those costs because they are already being recovered through the application of Rider PORCB. Accordingly, those costs were excluded by ComEd from the delivery service revenue requirement addressed in this proceeding. *See* ComEd Ex. 67 3.02, WP 7 at 3, line 22. RESA argues that "ARES incur their own call center costs to support the generation service they provide [sic] customers, thus ARES supply revenue has neither causation nor correlation to the amount of ComEd call center costs that should be allocated to the default supply rate." RESA BOE at 7.

Staff agrees with ComEd that default supply customers clearly receive no benefit from the purchase of receivables from RESs' customers and it would be inequitable to develop allocators that only consider ComEd supply customers when PORCB customers use the same customer care services. The costs associated with a RES care activity such as IT interfacing with RESs are recovered via delivery service charges applicable to all customers because it is an activity provided by ComEd that is "necessary in order for the transmission and distribution systems to function so that retail customers located in the electric utility's service area can receive electric power and energy from suppliers other than the electric utility." 220 ILCS 5/16-102.

The following example illustrates why customer care costs should be assigned only to the delivery function: assume that each high bill investigation performed by ComEd costs $8 and assume that by using allocators from the Allocation Study it is determined that $2 of the cost of such investigations are "supply-related" and should be assigned based upon the supply choice of the customer. That supply choice may be RES supply under Rider PORCB or ComEd supply depending on the supply position of that customer. ComEd must still recover the same $8 cost per investigation (plus any additional cost that may be needed to identify and record the complaining customer's supplier). It is not practical to assign that $2 in "supply-related" costs to only Rider PORCB RES-supplied customers or to only ComEd-supplied customers considering that high bill calls are generally attributable to kWh usage or RES supply pricing and it is not reasonable to make such an adjustment because allocators in the Allocation Study do not represent cost causation.

Because RESA's argument continues to ignore the fundamental cost basis for including PORCB revenues in the revenue allocator, its exclusion from the factors RESA uses to modify ComEd's study creates an undue subsidy for switched customers. *See* ComEd Ex. 30.0 at 14. There has been no apportionment of the portion of ComEd's customer care costs that are incurred due to RES-related activities, such as fielding customer complaint calls pertaining to RES price increases. *See* ComEd Ex. 7.0 at 60. Without an apportionment of RES-related customer care costs to only RES-supplied customers, the result is that customers for which ComEd procures electric supply service will pay for customer care costs allocated to ComEd's delivery function, customer care costs allocated to ComEd's supply function, and customer care costs that are incurred only for the benefit of RES-supplied customers. *See* ComEd Ex. 2.0 at 41. Therefore, the Commission should reject RESA's argument with respect to this issue.

All in all, both the Allocation Study (not adopted by the ALJPO) and the Alternative Study (adopted by the ALJPO) produce a subsidy. Subsidies do not foster efficient competition and do not support the concept of cost. Such subsidies distort prices, create inefficiencies, and potentially could increase costs to customers. Contrary to the Commission's concerns about improper subsidies and undue customer impacts, the positions taken by RESA by allocating $34 million to ComEd's supply function would create subsidies to be borne by ComEd's supply customers and without any regard for the impact on these customers. RESA's various adjustments to shift significant costs from delivery to supply take results-oriented approaches to achieve the pre-determination result of making RESs artificially more competitive. Ultimately, the assumptions embodied in RESA's proposals are based on improper theories of cost allocation and ignore the basic principle of cost causation. ICC Staff Exhibit 9.0 at 32.

III. The Commission should reject ComEd's recommendation to include in its compliance filing tariff revisions to its Rider PE and Rate BESH, as applicable, to provide for the recovery in supply charges of these costs.

ComEd's proposed modification to the Proposed Order that ComEd make a compliance filing to Rider PE and Rate BESH related to the customer care cost issue should be rejected. With respect to Customer Care Costs, ComEd argues that:

> if the Commission were to adopt the Alternative Analysis and shift approximately $11 million in CCCosts attributable to ComEd's call center operations out of the delivery service revenue requirement, the Commission should apply the adjustment to both the initial rate year and the reconciliation year revenue requirements and direct ComEd to include in its <u>compliance filing tariff revisions to its Rider PE and Rate BESH</u>, as applicable, to provide for the recovery in supply charges of these costs. Appropriate language to that end is found in Alternative B of Exception 11. ComEd reserves its ability to raise in the future the need to apportion to RES-supplied customers their share of the costs removed from the delivery service revenue requirement. This need will become more acute if the number of customers receiving supply service from ComEd dwindles even further or the amount of RES supply costs they are required to pay for increases.

ComEd BOE at 18.

Staff takes issue with ComEd's proposal that assuming approximately $11 million in costs are removed from delivery services and be attributed to supply, which both ComEd and Staff agree should not happen, the final order in this matter should "direct ComEd to include in its compliance filing tariff revisions to its Rider PE and Rate BESH, as applicable." *Id.* Such a proposal would not be fair to the parties, especially Staff. The "applicable" changes have not been the subject of testimony or briefing in this docket and are presently unknown. It is possible that Staff and parties may have questions with or take issue with ComEd's proposed changes. To address this concern, Staff recommends that such tariff filings follow the normal Section 9-201 procedure of allowing 45 days notice and possible suspension of the proposed tariff changes to Rider PE and Rate BESH. 220 ILCS 5/9-201(a). If ComEd was ordered to make the tariff filing changes to Rider PE and Rate BESH as part of a compliance filing, Staff would only have 4 days to review ComEd's proposed compliance tariff changes. 220 ILCS 5/9-201(b). A four day review would not allow sufficient time for Staff to review language that has never previously been seen by Staff or the parties. Accordingly, ComEd's exception that it be allowed to make a compliance filing for changes to Rider PE and Rate BESH should be rejected.

3. Capacity Unbundling

XII. FINDINGS AND ORDERING PARAGRAPHS

XIII. TECHNICAL CORRECTIONS

ComEd proposes that "if the Commission were to adopt the Alternative Analysis and shift approximately $11 million in CCCosts [customer care costs] attributable to ComEd's call center operations out of the delivery service revenue requirement, the Commission should apply the adjustment to both the initial rate year and the reconciliation year revenue requirements." ComEd BOE at 18. The ALJPO conclusion to "allocate $10,927,146 of ComEd's customer service costs to its supply function" is in essence a finding that only the remainder of the 2013 costs should be included in the jurisdictional delivery service revenue requirement. ALJPO at 102. Therefore, the adjustment to remove the approximate $11 million from the reconciliation year ("RY") revenue requirement, as ComEd proposes, is reasonable. In fact, since the filing year ("FY") revenue requirement is to be adjusted only for the *pro forma* plant additions (along with any derivative adjustments) for the year ending December 31, 2014 (Section 16-108.5(d)), it would not be appropriate to only include the adjustment in the FY revenue requirement (Appendix A) as reflected in the ALJPO. Therefore, Staff recommends that the adjustment for customer care costs shown on Appendix A, Schedule 2 FY, column (c) be likewise reflected on Appendix B, Schedule 2 RY, Column (c).

In addition, since the record reflects the actual amount to be allocated to the supply function of $10,927,146 based on the Alternative Study, the adjustment on both appendices should reflect that amount rounded to thousands, or $10,927. Therefore, if the PO conclusion stands, the following language revisions should also be made to clarify the actual amount of the adjustment:

1) Last sentence in first partial paragraph on page 94

> RESA states that, in the alternative, at a minimum, the Commission should adopt ComEd's Updated Alternative Study, which was updated to include indirect costs and which would allocate ~~approximately $11 million~~ <u>$10,927,146</u> to the supply function, as modified by RESA witness White (RESA Ex. MW 2.1), to allocate approximately $34 million of ComEd's call center expenses to the default supply rate.

2) Last paragraph under RESA's Position on page 96:

> If the Commission does not adopt RESA's Modified Allocation Study, RESA recommends that, at a minimum, the Commission adopt ComEd's updated Alternative Study (ComEd Ex. 16.03) which would

allocate ~~approximately $11 million~~ $10,927,146 to the supply function, as modified in the rebuttal testimony of Mr. White. RESA's Modified Alternative Study would allocate $34 million in call center costs to the default supply rate.

3) First bullet point on page 101:

ComEd's Alternative Study, which would allocate ~~approximately $11 million~~ $10,927,146 of ComEd's call center costs to the supply function; and

4) Last paragraph in the Commission Conclusion:

ComEd's statutorily required POLR obligations are a convincing argument against a strict application of the general principle of rate design based on cost causation. This statutory obligation could lead to the problem of very few customers being on ComEd's supply service which ComEd must offer even if it does not make economic sense. Those few customers could arguably not support the cost of their own service. At this point in time, this is not the status of ComEd's service and allocating ~~$11 million~~ $10,927,146 is reasonable. This further supports the Commission's adoption of the Alternative Study, as opposed to the Allocation Study.

XIV. CONCLUSION

WHEREFORE, for all of the following reasons, Staff respectfully requests that the Commission's order in this proceeding reflect all of Staff's recommendations regarding the Company's tariffs and charges submitted pursuant to Section 16-108.5 of the Public Utilities Act as described herein and in Staff's BOE.

Respectfully submitted,

__/s/____________________

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